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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

KATHRINE VELASQUEZ,
Plaintiff,
v.
MARTIN O'MALLEY,¹
Commissioner of Social Security,
Defendant.

) CIVIL NO. 1:23-cv-00367-SKO
)
) **STIPULATION FOR THE AWARD AND**
) **PAYMENT OF ATTORNEY FEES AND**
) **EXPENSES PURSUANT TO THE**
) **EQUAL ACCESS TO JUSTICE ACT, 29**
) **U.S.C. § 2412(d); ORDER RE:**
) **STIPULATION AND DENYING**
) **MOTION FOR ATTORNEY'S FEES AS**
) **MOOT**

(Docs. 23 & 27)

¹ Martin O'Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Martin O'Malley should be substituted for Kilolo Kijakazi as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

1 IT IS HEREBY STIPULATED by and between the parties through their undersigned
2 counsel, subject to the approval of the Court, that Plaintiff be awarded attorney fees and
3 expenses in the amount of \$9,700.00 (NINE THOUSAND SEVEN HUNDRED dollars) under
4 the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d). This amount represents
5 compensation for all legal services rendered on behalf of Plaintiff by counsel in connection with
6 this civil action, in accordance with 28 U.S.C. § 2412(d).
7

8 After the Court issues an order for EAJA fees to Plaintiff, the government will consider
9 the matter of Plaintiff's assignment of EAJA fees to counsel, if any. Pursuant to *Astrue v. Ratliff*,
10 560 U.S. 586, 598 (2010), the ability to honor any assignment will depend on whether the fees
11 are subject to any offset allowed under the United States Department of the Treasury's Offset
12 Program. After the order for EAJA fees is entered, the government will determine whether they
13 are subject to any offset.
14

15 Fees shall be made payable to Plaintiff, but if the Department of the Treasury determines
16 that Plaintiff does not owe a federal debt, then the government shall cause the payment of fees
17 and expenses to be made directly to counsel, pursuant to the assignment executed by Plaintiff.
18 Any payments made shall be delivered to counsel.
19

20 This stipulation constitutes a compromise settlement of Plaintiff's request for EAJA
21 attorney fees and does not constitute an admission of liability on the part of Defendant under the
22 EAJA or otherwise. Payment of the agreed amount shall constitute a complete release from, and
23 bar to, any and all claims that Plaintiff and/or counsel including counsel's firm may have relating
24 to EAJA attorney fees or costs in connection with this action.
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1 This award is without prejudice to the rights of counsel and/or counsel's firm to seek
2 Social Security Act attorney fees under 42 U.S.C. § 406(b), subject to the savings clause
3 provisions of the EAJA.
4

5 Dated: December 22, 2023

PENA & BROMBERG, PLC

6 /s/ Jonathan Pena*

7 JONATHAN PENA

Attorney for Plaintiff

8 *Authorized via e-mail on December 22, 2023

9 PHILLIP A. TALBERT

10 United States Attorney

MATHEW W. PILE

11 Associate General Counsel

12 Social Security Administration

13 By: /s/ Angela Thornton-Millard

14 ANGELA THORNTON-MILLARD

Special Assistant U.S. Attorney

15 Attorneys for Defendant

16 **ORDER**

17 Based upon the parties' Stipulation for the Award and Payment of Equal Access to
18 Justice Act Fees, Costs, and Expenses (Doc. 27), **IT IS ORDERED** that fees and expenses in the
19 amount of \$9,700 as authorized by 28 U.S.C. § 2412 be awarded subject to the terms of the
20 Stipulation.

21 **IT IS FURTHER ORDERED** that Plaintiff's motion for attorney's fees (Doc. 23) is
22 DENIED as MOOT.

23
24 IT IS SO ORDERED.

25 Dated: **December 26, 2023**

/s/ Sheila K. Oberto

26 UNITED STATES MAGISTRATE JUDGE
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28